

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

CIVIL NO. 1:07CV346

DANIEL H. BRACKETT,

Plaintiff,

Vs.

UNITED STATES OF AMERICA,

Defendant.

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ORDER

**THIS MATTER** is before the Court on Defendant's motion to dismiss.

In accordance with *Roseboro v. Garrison*, 528 F.2d 309 (4<sup>th</sup> Cir. 1975), Plaintiff, who is proceeding *pro se*, is cautioned that he carries a heavy burden in responding to a motion to dismiss. In this case, Defendant contends the action must be dismissed for lack of subject matter jurisdiction and for failure to state a claim for which relief may be granted due to the Plaintiff's failure to exhaust mandatory administrative remedies. **Fed. R. Civ. P. 12(b)(1), (6); Defendant's Motion to Dismiss and Memorandum in Support Thereof, filed October 30, 2007, at 1.**

Plaintiff is advised that the burden now shifts to him to refute this allegation and prove to the Court by a preponderance of the evidence that he did in fact exhaust the required administrative remedies before filing this civil action. Specific evidence is required and Plaintiff cannot rely on conclusory allegations or speculation for failure to state a claim.

Plaintiff will be afforded fifteen (15) days from service of this Order to respond to the Defendant's motion as set forth in this Order. Plaintiff's failure to respond will result in the action being summarily dismissed.

**IT IS, THEREFORE, ORDERED** that the Plaintiff is allowed fifteen (15) days from service of this Order within which to respond to Defendant's motion to dismiss.

Signed: December 11, 2007



Lacy H. Thornburg  
United States District Judge

